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PATENT
Attorney Docket No. HMV-006.11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	
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Philip W. Ingham et al.	)	Art Unit: 1646
	)	
Serial No.: 08/954,771	)	Examiner: C. Kaufman
	)	
Filing Date: October 20, 1997	)	
	)	
For: Vertebrate Embryonic Pattern Inducing Proteins and Uses Related Thereto	)	

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on February 24, 2000.

Jonathan Furtado

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

RESPONSE TO RESTRICTION REQUIREMENT

In response to the Restriction Requirement dated December 20, 1999, Applicants provisionally elect with traverse the invention set forth in Group II, claims 1, 49, 50, 69-70, 76-78, 80-86, 93-104, and 107-110.

In the restriction requirement under 35 U.S.C. § 121, the Examiner alleges that there are twelve distinct inventions as follows:

I. Claims 1, 49, 50, 69-70, 76-78, 80-86, 93-104 and 107-110, drawn to method of modulating one or more cell growth, differentiation and survival of a neuronal cell *in vitro* by providing a polypeptide, classified in class 514, subclass 2.

II. Claims 1, 49, 50, 69-70, 76-78, 80-86, 93-104 and 107-110, drawn to method of modulating one or more cell growth, differentiation and survival of a neuronal cell *in vivo* by providing a polypeptide, classified in class 514, subclass 2.

III. Claims 1, 49, 50, 69-70, 76-78, 80-86, 93-104 and 107-110, drawn to method of modulating one or more cell growth, differentiation and survival of a neuronal cell *in vitro* by providing a nucleic acid encoding a polypeptide, classified in class 514, subclass 44.

IV. Claims 1, 49, 50, 69-70, 76-78, 80-86, 93-104 and 107-110, drawn to method of modulating one or more cell growth, differentiation and survival of a neuronal cell *in vivo* by providing a a nucleic acid encoding a polypeptide, classified in class 514, subclass 44.

V. Claims 55-58, 69-75, 79, 83 and 93, drawn to method of preventing, treating or reducing the severity of a neurodegenerative disorder *in vivo* by providing a polypeptide, classified in class 514, subclass 2.

VI. Claims 55-58, 69-75, 79, 83 and 93, drawn to method of preventing, treating or reducing the severity of a neurodegenerative disorder *in vivo* by providing a nucleic acid encoding a polypeptide, classified in class 514, subclass 44.

VII. Claims 55-58, 69-75, 79, 83 and 93, drawn to method of preventing, treating or reducing the severity of an acute, subacute or chronic injury to the nervous system *in vivo* by providing a polypeptide, classified in class 514, subclass 2.

VIII. Claims 55-58, 69-75, 79, 83 and 93, drawn to method of preventing, treating or reducing the severity of an acute, subacute or chronic injury to the nervous system *in vivo* by providing a nucleic acid encoding a polypeptide, classified in class 514, subclass 44.

IX. Claims 65 and 66, drawn to a method of cerebral granting of neuronal cells contacted with a polypeptide, classified in class 514, subclass 2.

X. Claims 65 and 66, drawn to a method of cerebral granting of neuronal cells contacted with a nucleic acid encoding a polypeptide, classified in class 514, subclass 44.

XI. Claims 42, 43 and 48, drawn to hedgehog polypeptide or fragment thereof, classified in class 530, subclass 350.

XII. Claims 44-47, drawn to a nucleic acid encoding a hedgehog polypeptide or fragment thereof, classified in class 536, subclass 23.1

According to the Examiner, these inventions are distinct and "have acquired a separate status in the art because of their divergent subject matter, fall into different statutory classes of invention, and are separately classified and searched, restriction for examination purposes as indicated is proper." Applicants respectfully traverse this restriction.

The Examiner's attention is directed to M.P.E.P. § 803, which states that:

> If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus, for a restriction requirement to be valid, the Examiner must establish the following two criteria:

(1) the existence of independent and distinct inventions (35 U.S.C. § 121); and

(2) that the search and examination of the entire application cannot be made without serious burden (M.P.E.P. § 803).

Applicants respectfully submit that the Examiner has not shown that the second requirement has not been met with respect to the Groups as classified above. All the pending claims are classified in class 514, subclass 2 or 44. Therefore, since the search for the pending claims is virtually co-extensive, Applicants submit that it would not be an undue burden to search for the pending claims. Therefore, it Applicants position that the restriction requirement is in error and that the Examiner has not shown that a serious burden would be required to examine all the claims.

If there are any fees due in connection with this Response, the Commissioner is authorized to charge our **Deposit Account No. 06-1448**.

If there are any questions after reviewing these papers, the Examiner can contact the undersigned at (617) 832-1242.

Respectfully submitted,
FOLEY, HOAG, & ELIOT

February 24, 2000

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